



To the Honorable Council
City of Norfolk, Virginia

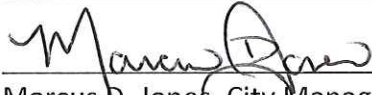
December 15, 2015

From: Chuck Rigney, Director of Development

Subject: Ordinance Approving an Agreement Pertaining to the Public Road to be constructed at Lake Wright

Reviewed: 
Ronald H. Williams, Jr., Deputy City Manager

Ward/Superward: 4/7

Approved: 
Marcus D. Jones, City Manager

Item Number: **R-6**

I. Recommendation: Adopt Ordinance

II. Applicant: Economic Development Authority of the City of Norfolk
500 East Main Street, Suite 1500
Norfolk, VA 23510

III. Description:
This agenda item is an ordinance to approve an agreement by, between and among Lake Wright, LLC, Hospitality Management Advisors, Inc., CXA 6 Corporation, the Economic Development Authority (EDA) of the City of Norfolk, Lake Wright II, LLC and the City of Norfolk pertaining to Premium Outlets Boulevard to be constructed at Lake Wright.

IV. Analysis

- The road will be constructed entirely within the boundaries of the City of Norfolk.
- The EDA will build a portion of Premium Outlets Boulevard located on property owned by Lake Wright II, LLC, which will require the relocation of the access drive to the existing hotel.
- The agreement requires the EDA and City to maintain access during construction for the hotel and to construct a new driveway across the Lake Wright II, LLC property to the hotel property.

V. Financial Impact

- Adoption of this ordinance has no direct financial impact to the City.
- Construction of the driveway will be financed and managed by the EDA through an Infrastructure Development Agreement with Simon Properties.

VI. Environmental

N/A

VII. Community Outreach/Notification

Public notification for this agenda item was conducted through the City of Norfolk's agenda notification process.

VIII. Board/Commission Action

N/A

IX. Coordination/Outreach

This letter has been coordinated with the Department of Development, City Attorney's office and the City Manager's office.

Supporting documentation from the City Attorney's Office:

- Ordinance
- Agreement

11/9/2015mr

Form and Correctness Approved

By

Office of the City Attorney

Contents Approved:

By

DEPT.

NORFOLK, VIRGINIA

ORDINANCE No.

AN ORDINANCE APPROVING AN AGREEMENT BY,
BETWEEN AND AMONG LAKE WRIGHT, LLC,
HOSPITALITY MANAGEMENT ADVISORS, INC., CXA
16 CORPORATION, THE ECONOMIC DEVELOPMENT
AUTHORITY OF THE CITY OF NORFOLK, LAKE
WRIGHT II, LLC, AND THE CITY OF NORFOLK
PERTAINING TO THE PUBLIC ROAD TO BE
CONSTRUCTED AT LAKE WRIGHT

- - -

WHEREAS, Lake Wright, LLC owns and operates two hotels
located at 6280 Northampton Boulevard in the City of Norfolk
(the "Hotel Property"); and

WHEREAS, the City desires to build a public road on
property located next to the Hotel Property and owned by Lake
Wright II, LLC (the "Lake Wright II Property"); and

WHEREAS, construction of the public road will require
a relocation of the access drive to the Hotel Property; and

WHEREAS, the parties desire to enter into this
Agreement in order to set forth the terms and conditions upon
which the EDA will construct a driveway across the Lake Wright
II Property to the Hotel Property; now, therefore

BE IT ORDAINED by the Council of the City of Norfolk:

Section 1:- That the Agreement by, between and
among Lake Wright, LLC, Hospitality Management
Advisors, Inc., CXA 16 Corporation, the Economic

Development Authority of the City of Norfolk, Lake Wright II, LLC and the City, a copy of which is attached hereto as Exhibit A, is hereby approved.

Section 2:- That the City Manager and other proper officers of the City are authorized to execute the Agreement on behalf of the City and do all things necessary and proper to carry out the terms of the Agreement.

Section 3:- That the City Manager is further authorized to correct, amend or revise the Agreement as he may deem necessary to carry out the intent of the Council.

Section 4:- That this ordinance shall be in effect from and after its adoption.

AGREEMENT

THIS AGREEMENT is made as of the ____ day of _____, 2015, by, between, and among **LAKE WRIGHT, LLC**, a Virginia limited liability company (“Lake Wright”), **HOSPITALITY MANAGEMENT ADVISORS, INC.**, a _____ (the “Receiver”), **CXA 16 CORPORATION**, a Texas corporation (the “Lender”), the **CITY OF NORFOLK**, a municipal corporation of the Commonwealth of Virginia (the “City”), the **ECONOMIC DEVELOPMENT AUTHORITY OF THE CITY OF NORFOLK**, a political subdivision of the Commonwealth of Virginia (the “EDA”), and **LAKE WRIGHT II, LLC**, a Virginia limited liability company (“Lake Wright II”).

RECITALS

WHEREAS, Lake Wright is the fee owner of the real property located at 6280 Northampton Boulevard in the City of Norfolk (the “Hotel Property”); and

WHEREAS, on or about April 13, 2012, Manager was appointed as receiver to operate the businesses and hotels at the Hotel Property by the United States District Court for the Eastern District of Virginia (Norfolk Division) pursuant to a Consent Order endorsed by counsel for Lake Wright and the predecessor of Lender, LNV Corporation; and

WHEREAS, the Lender is the holder of certain indebtedness secured by a deed of trust lien encumbering the Hotel Property and assignment of rents and leases encumbering the Hotel Property, together with a security interest in the personal property located on the Hotel Property; and

WHEREAS, the City desires to build a public road from Northampton Boulevard across the property formerly known as Lake Wright Golf Course (the “Public Road”);

WHEREAS, the Public Road is designed to be constructed, in part, on property located next to the Hotel Property, which is owned by Lake Wright II (the "Lake Wright II Property"); and

WHEREAS, there is existing access to the Hotel Property via an existing easement. Construction of the Public Road will require a relocation of the existing access to the Hotel Property; and

WHEREAS, the parties desire to enter into this Agreement in order to set forth the terms upon which the EDA agrees to construct a driveway across the Lake Wright II Property to the Hotel Property as part of its construction of the Public Road.

AGREEMENT

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which each party irrevocably acknowledges, each party represents, warrants, undertakes, and agrees as follows:

1. Construction of Driveway to Hotel Property; Temporary Access. As part of its construction of the Public Road, the EDA shall cause to be constructed a new paved access drive to the Hotel Property, with curb, gutter, landscaping, and lighting, in the location shown and substantially in accordance with the plans and specifications set forth in Exhibit A attached hereto and made a part hereof (the "Driveway"). The Driveway shall be constructed simultaneously with construction of the Public Road. Subject to the terms and conditions set forth in this Agreement, construction of the Driveway shall conclude on or before May 30, 2017, subject to *force majeure*. The EDA shall provide written notice to Lake Wright, the Receiver, the Lender, and Lake Wright II of the date on which construction of the Driveway and the portion of the Roadway that will connect the Driveway to Northampton Boulevard is scheduled to commence as soon as practicable.

Construction of the Public Road shall be phased to allow continuous access to the Hotel Property in accordance with the "Public Roadway and Hotel Access Phasing Exhibit" attached hereto as **Exhibit B**. Electrical power lines necessary for lighting the Driveway shall be installed as part of construction of the Driveway to the eastern boundary line of the Hotel Property at the point where the Relocated Access Easement (defined below) connects to the Hotel Property. Lake Wright shall be responsible for the cost of connecting such electrical lines to the electrical lines on the Hotel Property and for any hookup fees or charges and any costs or expenses related thereto. Subject to Section 5 below and except for damages to the Driveway caused by the EDA or its contractors during construction of the Public Road, once construction of the Driveway is complete, neither the City nor the EDA shall have any obligation for maintenance and repair of the Driveway and any improvements related thereto, including, without limitation, the electrical lines, curb, gutters, and landscaping. Maintenance obligations of the Driveway shall be as set forth in the "Amended Declaration" (as defined below).

2. **Relocation of Access Easement.** Both the Hotel Property and the Lake Wright II Property are subject to the terms and conditions of that certain Declaration of Easement dated November 7, 2007, and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument 070041220 ("Declaration of Easement") and that certain Deed dated November 7, 2007 between Lake Wright and Lake Wright II and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument No. 070041222 (the "Existing Access Easement Deed"). Lake Wright and Lake Wright II agree that the access easement across the Lake Wright II Property, shown on **Exhibit A** as "Existing Access Easement" (the "Existing Access Easement"), shall be amended to relocate the new area for ingress and egress to the Hotel Property in the location and of the dimensions shown on **Exhibit A** (the "Relocated Access Easement").

The Existing Access Easement shall be changed and modified to the Relocated Access Easement by modification and amendment of the Declaration of Easement (the "Amended Declaration"). The Amended Declaration shall be recorded at or prior to the conveyance of the Public Road property from Lake Wright II to the EDA. The Amended Declaration shall provide that immediately upon completion of the Driveway and acceptance thereof in writing by the owner of the Hotel Property and the Receiver, which acceptance shall not be unreasonably withheld, conditioned or delayed, the right to use the Existing Access Easement shall be modified to the Relocated Access Easement. The EDA's right and obligation to build the Driveway hereunder are conditioned upon the owner of the Hotel Property being granted the Relocated Access Easement for ingress and egress to the Hotel Property being granted as provided in this Agreement.

3. Release of Access Easement Two. Both the Public Road property and the adjoining property owned by the EDA east of the Public Road property are subject to an access easement ("Access Easement Two") pursuant to the terms of that certain Deed dated April 1, 1999 and recorded in the Clerk's Office of the Circuit Court of the City of Norfolk as Instrument No. 990018134 and at Map Book 52 at Page 140. Immediately upon execution of this Agreement, Lake Wright and Lake Wright II shall cause Access Easement Two to be released. The City of Norfolk shall release the portion of Access Easement Two within the property of Lake Wright II.

4. Signage.

(a) Lake Wright hereby relinquishes any right or interest it might have in the hotel pylon sign located on the Public Road property and shall make no further claims with respect to loss or replacement thereof. The EDA shall remove and dispose of such hotel pylon sign from the Public Road property.

(b) The City acknowledges the desire of the owner of the Hotel Property to have

directional signage in the Public Road right-of-way area to mark the Driveway as the entrance to the Hotel Property. Although the necessary encroachment allowing such directional signage is subject to approval by the City Council of the City of Norfolk, the City agrees to cooperate with Lake Wright in its application therefor. Neither the City nor the EDA shall have any obligation for maintenance and repair of any such directional signage. Maintenance and repair of the directional signage shall be the responsibility of the owner of the Hotel Property and/or the Receiver (as agreed between them or their successors).

(c) In accordance with Section 1 of this Agreement, as access to the entrance to the Hotel Property changes from time to time throughout construction of the Public Road and the Driveway, directional signage to the Hotel Property shall be provided by the EDA at the sole cost and expense of the EDA. Lake Wright II agrees to the use of the Lake Wright II Property for such temporary directional signage.

5. Alternate Public Road Location. In the event the EDA determines, in its sole and absolute discretion, to shift the alignment of the Public Road to the east so that it aligns with Wesleyan Boulevard (the "Alternate Public Road Location"), the EDA agrees that it will (a) grant to both Lake Wright and Lake Wright II a permanent easement for ingress and egress over that portion of the Lake Wright II Property to be acquired by the EDA for the Public Road, extending the Relocated Access Easement such that it runs from the Hotel Property to the Alternate Public Road Location and (b) construct the additional portion of the Driveway necessary to connect the Hotel Property to the Alternate Public Road Location, at its sole cost and expense, to the same standards shown on Exhibit A, including curb, gutters, lighting, and landscaping, subject to review and approval of detailed plans by Lake Wright II and the Receiver. The City and the EDA do not anticipate that the location of the Relocated Access Easement will need to be moved if the roadway

alignment is shifted. During construction, continuous access to the Hotel Property and the Lake Wright II Property will be maintained over the Existing Access Easement and directional signage to the Hotel Property shall be provided by the EDA as set forth in this Agreement. Lake Wright shall be responsible for maintaining the easement area within the City owned property until such time as Lake Wright II, or its successor, in accordance with the Amended Declaration.

6. Waivers and Releases of Future Claims Related to a Taking or Condemnation.

Upon the EDA's completion of construction of the Driveway and acceptance in writing of the Driveway by Lake Wright and the Receiver, which acceptance shall not be reasonably withheld, conditioned or delayed, Lake Wright, Lake Wright II, the Lender, and the Receiver agree that any and all claims against the City or the EDA, including but not limited to those claims related to a taking or condemnation, arising from the construction of the Public Road and Wesleyan Drive Extended, the relocation of the access drive to the Hotel Property, or any related roadway alterations or improvements which presently exist or may have previously accrued, shall be irrevocably waived and released without the necessity of any further writing by the parties hereto.

7. Partial Release of *Lis Pendens*. As additional consideration for the obligations incurred by the City and the EDA herein, Lake Wright, the Lender and the Receiver agree that the Receiver shall release the *Lis Pendens* recorded in the Clerk's Office as Instrument 140001516 as to that portion of the Lake Wright II Property being acquired by the EDA for the Public Road. Upon execution and delivery of this Agreement by all parties, but in no event later than closing of the conveyance of the Public Road property by Lake Wright II to the EDA, Lake Wright and the Receiver shall direct their attorney to submit such release to the Clerk's Office for recording.

8. No Other Necessary Parties. Each party represents and warrants to each other party that no other person or entity is required as a party to this Agreement in order to accomplish fully the purposes of this Agreement.

9. Approval of Agreement and Authority of Signatories. Each party irrevocably represents to each other party that it has obtained all necessary authority to enter into and to perform its obligations under this Agreement, and each person executing this Agreement on behalf of a party irrevocably represents to each other party that he or she has full authority to bind the party by such signature.

10. Subject to Development. The parties acknowledge and agree that, due to funding limitations, the EDA and the City shall have no obligation to build the Public Road if either (a) the EDA does not close upon the anticipated sale of the north portion of the Lake Wright golf course property or (b) all necessary approvals for the Public Road are not received.

11. Default.

The occurrence of any of the following shall be an event of default under this Contract:

(a) The filing of a voluntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtors' rights;

(b) The consent to an involuntary proceeding under present or future bankruptcy, insolvency, or other laws respecting debtor's rights;

(c) The entering of an order for relief against a party or the appointment of a receiver, trustee, or custodian for all or a substantial part of the property or assets of Lake Wright, Lake Wright II, or the EDA in any involuntary proceeding, and the continuation of such order, judgment or decree unstayed for any period of thirty (30) consecutive days; provided, however the

parties acknowledge that Manager has been appointed as a receiver for Lake Wright and that such appointment shall not constitute an event of default under this Contract;

(d) The failure of any party to perform or to observe any covenant, obligation, condition or requirement of this Agreement not specifically named as a default in this Section 11, and the continuation of such failure for fifteen (15) days after written notice from the other party or parties specifying the nature and extent of any such default, or, if such default cannot reasonably be cured within such fifteen (15) day period, the failure to commence to cure such default within such fifteen (15) day period and to diligently continue to pursue such effort to cure to completion, but in no event to exceed sixty (60) days after the written notice of default.

12. Predecessors, Successors, and Assigns. All rights under this Agreement shall inure to the benefit of, and all obligations under this Agreement shall be binding upon, the predecessors, successors, assigns, subsidiaries, affiliates, employees, members, shareholders, agents, and representatives of each of the parties to this Agreement.

13. Disputed Claims. This Agreement reflects the settlement of disputed matters and claims and nothing in this Agreement is intended to be, or shall be construed as, an admission of liability on the part of any party.

14. Attorneys' Fees and Costs. Each party shall bear its own expenses, including attorneys' fees, expert fees, engineering fees, accounting fees, and all other costs incurred in conjunction with the negotiations between the parties leading to this Agreement including but not limited to the litigation that has been initiated and continued between and among the Receiver, Lake Wright, Lake Wright II and the Lender in the Circuit Court of the City of Norfolk, with the exception of those fees and costs properly recoverables by Lender pursuant to the governing loan documents executed by Lake Wright in connection with the loan secured by the Hotel Property.

15. Entire Agreement. This Agreement constitutes the entire agreement between the parties with regard to the subject matter hereof, and may not be (a) altered, amended, or modified in any respect; (b) waived, in whole or in part; and/or (c) assigned in whole or in part, unless such alteration, amendment, modification, waiver, or assignment is in writing and has been duly executed by all parties affected by any such alteration, amendment, modification, waiver, or assignment. Some or all of the parties anticipate entering into additional agreements, including an agreement for the transfer of the Public Road property and an agreement for the settlement of the *Lis Pendens* issues. Such agreement shall not be interpreted to modify the terms and conditions set forth herein.

16. Advice of Counsel. Each party irrevocably represents, warrants, and acknowledges that this Agreement has been reviewed by its counsel, that it is fully aware of the nature and extent of its rights and obligations under this Agreement, and that it is entering into this Agreement freely and voluntarily, intending to be bound by the terms of this Agreement and unaware of any reason or reasons why this Agreement would not be fully enforceable according to its terms or of any defense to enforcement of the terms of this Agreement against it.

17. Drafting. Each party has played an equal role in drafting this Agreement, and this Agreement shall not be construed in favor of or against any one or more of the parties by virtue of any party's role in drafting this Agreement.

18. Incorporation of Recitals. The Recitals set forth above are incorporated into and made a part of this Agreement.

19. Headings. The headings of the various sections of this Agreement are included for the convenience of the parties, and shall not be considered in interpreting, construing, or enforcing the terms of this Agreement.

20. Governing Law, Jurisdiction, and Venue. This Agreement shall be governed, construed, and enforced in accordance with the applicable internal substantive laws of the Commonwealth of Virginia without regard to its conflict of laws principles. Any action to enforce this Agreement shall be brought exclusively in the Circuit Court of the City of Norfolk, and each party irrevocably consents to personal jurisdiction and venue such court for purposes of any such action.

21. Notices. Any notices under this Agreement shall be deemed given when delivered by hand-delivery or national overnight delivery service to the addresses set forth below:

If to Lake Wright:

c/o Gary Tigges
Regional VP of Operations
Wright Investment Properties
277 German Oak Drive
Cordova, TN 38018

With a copy to:

Jeffrey M. Stedfast
Kaufman & Canoles
150 W. Main Street, Suite 2100
Norfolk, VA 23510

If to Lake Wright II:

With a copy to:

Howard R. Sykes, Jr., Esq.
Sykes, Bourdon, Ahern & Levy,
P.C
281 Independence Blvd., 5th Floor
Pembroke One Building
Virginia Beach, VA 23462-2989

If to Lender:

Mark Pulliam
CLMG Corp.
7195 Dallas Parkway
Plano, TX 75024

with a copy to:

John McJunkin, Shareholder
Baker Donelson
901 K. Street, NW, Suite 900
Washington, DC 20001

with a copy to:

If to the City:

City Manager
City of Norfolk, Virginia
1101 City Hall Building
810 Union Street
Norfolk, Virginia 23510

City Attorney
City of Norfolk, Virginia
810 Union Street, 9th Floor
Norfolk, Virginia 23510

If to the EDA:

Executive Director
Economic Development Authority of the
City of Norfolk
500 E. Main Street, Suite 1500
Norfolk, Virginia 23510

with a copy to:

William L. Nusbaum, Esq.
Williams Mullen
999 Waterside Drive, Suite 1700
Norfolk, VA 23510

22. Counterparts. This Agreement may be signed in counterparts and sent by electronic transmission, with a confirmation hard copy. The Agreement shall be signed in quadruplicate so that each party may retain an original of the Agreement executed on behalf of each party.

Signatures on following page

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the
date first written above.

LAKE WRIGHT, LLC

By: _____

Name: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____,
2015, by _____, _____ of Lake
Wright, LLC, who is personally known to me or has produced valid identification.

Notary Public

My commission expires:

[COUNTERPART SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

LAKE WRIGHT II, LLC

By: _____

Name: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, as _____ of Lake Wright II, LLC, who is personally known to me or has produced valid identification.

Notary Public

My commission expires:

[COUNTERPART SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the
date first written above.

MANAGER:

HOSPITALITY MANAGEMENT ADVISORS,
INC.

By: _____

Name: _____

Its: _____

STATE OF _____,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2015, by _____, as _____ of Hospitality
Management Advisors, Inc., who is personally known to me or has produced valid identification.

Notary Public

My commission expires:

[COUNTERPART SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

LENDER:

CXA 16 CORPORATION

By: _____

Name: _____

Its: _____

STATE OF _____,
CITY/COUNTY OF _____, to-wit:

The foregoing instrument was acknowledged before me this _____ day of _____, 2015, by _____, _____ of CXA 16 Corporation who is personally known to me or has produced valid identification.

Notary Public

My commission expires:

[COUNTERPART SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date first written above.

CITY:

CITY OF NORFOLK, VIRGINIA

By: _____

Name: _____

Its: _____

ATTEST:

City Clerk

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____ and _____, who are personally known to me or have produced valid identification.

Notary Public

My commission expires: _____

APPROVED AS TO CONTENTS:

APPROVED AS TO FORM AND
CORRECTNESS:

Charles E. Rigney, Sr., Director
Department of Development

Assistant City Attorney

[COUNTERPART SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the
date first written above.

EDA:

ECONOMIC DEVELOPMENT AUTHORITY OF
THE CITY OF NORFOLK

By: _____

Name: _____

Its: _____

COMMONWEALTH OF VIRGINIA,
CITY OF NORFOLK, to-wit:

The foregoing instrument was acknowledged before me this ____ day of _____,
2015, by _____, who is personally known to me or has
produced valid identification.

Notary Public

My commission expires: _____

APPROVED AS TO CONTENTS:

Executive Director, Economic Development
Authority of the City of Norfolk

**APPROVED AS TO FORM AND
CORRECTNESS:**

Special Counsel to the Economic Development
Authority of the City of Norfolk

EXHIBIT A

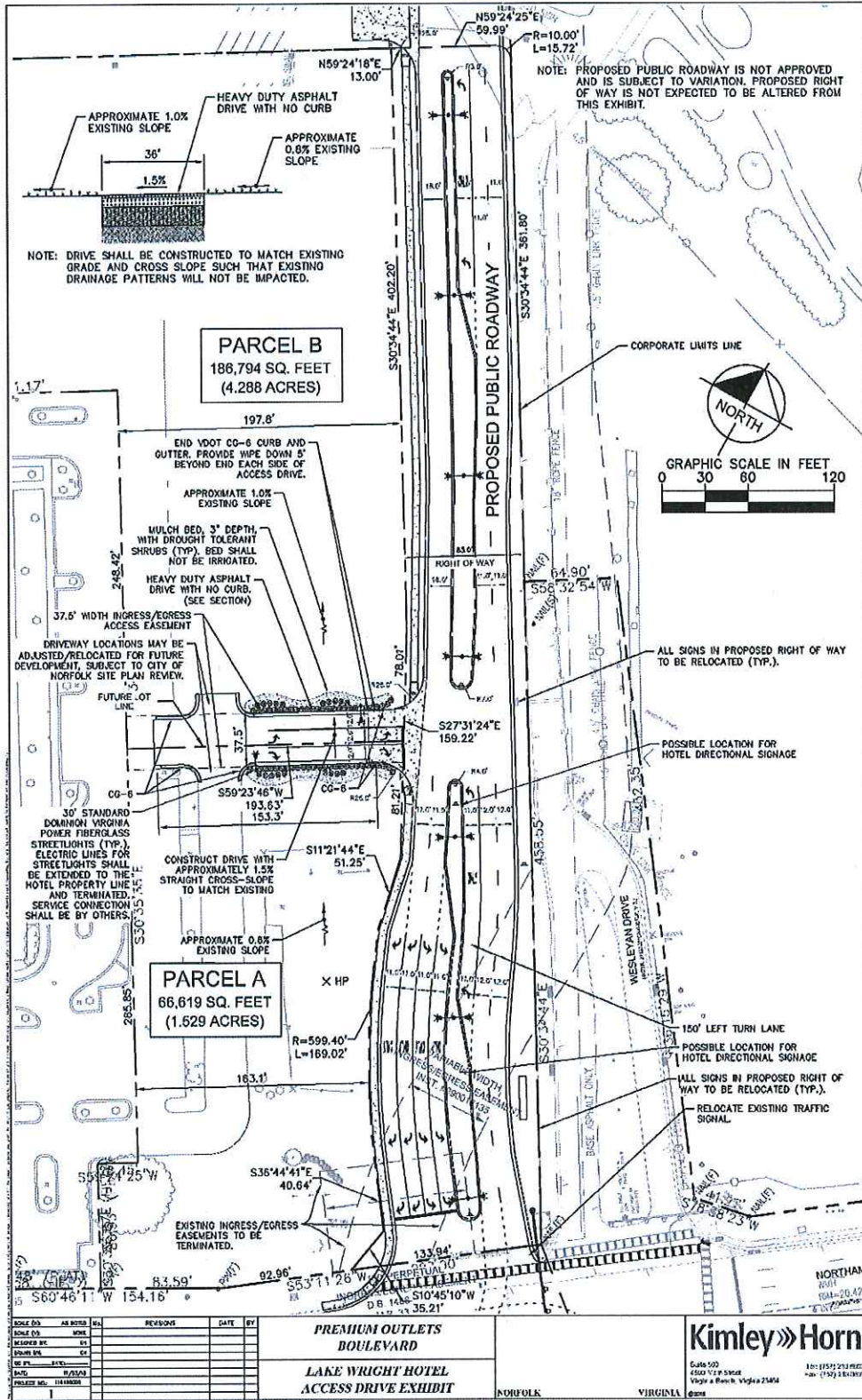


EXHIBIT B

